MONTANA LEGISLATIVE HISTORY

Chapter 129 19 99

Bill H 335 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 26	✓ C	Hearing Date(s)	Mar 02	✓ C
		C			C
		C			C
		C			C
Date Out	Jan 26	✓ C		Mar 02	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

CHAPTER NO. 122

HOUSE BILL NO. 335

INTRODUCED BY RAMIREZ, SCULLY

IN THE HOUSE

January 23, 1979	Introduced and referred to Committee on Judiciary.
February 7, 1979	Committee recommend bill do pass. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 13, 1979	Introduced and referred to Committee on Judiciary.
March 2, 1979	Committee recommend bill be concurred in. Report adopted.
March 5, 1979	Second reading, concurred in.
March 7, 1979	Third reading, concurred in.

IN THE HOUSE

March 8, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

LC 0653/01

INTRODUCED BY Ramirez HOUSE BILL NO. 335

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CUSTODY HEARING, IF REQUESTED, UPON THE DEATH OF A CUSTODIAL PARENT; AND AMENDING SECTIONS 40-4-219 AND 40-6-221, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Hearing upon death of custodial parent. Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in [section 2] request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

NEW SECTION. Section 2. Parties who may request a hearing. Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(1) the noncustodial natural parent;

(2) the surviving spouse of the deceased custodial parent;

(3) a person nominated by the will of the deceased custodial parent;

(4) any person nominated by the child if the child is at least 12 years old;

(5) any other person if that person has actual physical control over the child;

(6) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

NEW SECTION. Section 3. Determination of custody. The hearing and determination of custody shall be governed by [Title 40, chapter 4, part 2].

Section 4. Section 40-4-219, MCA, is amended to read:

"40-4-219. Modification. (1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of

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INTRODUCED BILL

the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(4) A custody decree may be modified upon the death of the custodial parent pursuant to [sections 1 through 3]."

Section 5. Section 40-6-221, MCA, is amended to read:

"40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to [sections 1 through 3]."

-End-

trials on schedule.

JIM JENSON: Montana Magistrates Association. I would con with Mr. Ramirez and the comments he has made.

JANET JENSON: Justice of the Peace of Missoula. I concur.

With no discussion and no questions the hearing closed on HB 311.

HOUSE BILL NO. 335: Representative Ramirez said this bill provided for a custody hearing upon the death of a custodial parent. He went on and explained. It will make a significant change to the people who are affected. If a parent who has custody of a child dies then the custody would go to the natural parent, even though that may not be in the best interests of the child. This would change that absolute custody. Sometimes it should be someone other than the natural parent. He gave examples of cases. This was the reason for this bill being proposed.

There were no other proponents, no opponents and no questions from the committee. The hearing closed on House Bill 335.

HOUSE BILL NO. 332: Representative Keyser said this bill would permit the application for a search warrant to be made by a sworn telephonic statement and recorded. This bill is at the request of the Sheriffs and Peace Officers Association. He explained how the warrant would be issued and that the judge would issue a warrant but that it would be much faster.

JOHN BELL: Montana Sheriff and Peace Officers Association. I support this bill. John Moe, the former sheriff of Missoula, heartily endorses this bill. He gave examples of cases he was familiar with.

JIM BURNS: Under Sheriff of Cascade County. This bill is modeled after state laws in California and Washington. I know of many cases where this bill would have helped. Sometimes the distance from the courthouse can have a definite influence on the outcome of an arrest. We feel that this proposed legislation properly controlled by the judge, and then the conversation is reduced to writing immediately after and is a part of the court record, would be a distinct advantage in a case

HOUSE BILL NO. 258: Representative Keyser moved to pass for the day and the motion carried. After some discussion Representative Lory moved that the members reconsider their action and the motion carried with the vote unanimous.

Representative Lory moved an amendment on Page 1, line 14, following "be" strike "written" and insert "typed or printed" and also on page 1, line 15, following "as" strike, "typed or printed" and insert "written". The motion to amend carried with the vote unanimous.

Representative Keyser moved "do pass as amended" and the motion carried with the vote unanimous.

HOUSE BILL NO. 311: Representative Daily moved "do pass" and the motion carried with Representative Uhde voting "no".

HOUSE BILL NO. 335: Representative Seifert moved "do pass". Representative Lory moved a substitute motion to pass for the day. The motion carried with Representatives Holmes and Roth voting "no".

HOUSE BILL NO. 322: Representative Keyser moved "do pass". Discussion followed about who has the authority to order the vehicle to be removed. The question was called and the motion carried with Representatives Eudaily, Kemmis, and Anderson voting "no".

HOUSE BILL NO. 332: Representative Seifert moved "do pass". Representative Holmes moved an amendment on page 2, line 2, following "and" strike "reduced to writing" and insert "transcribed, time and date of the recording".

Representative Iverson moved to divide the amendment and the motion carried with the vote unanimous. The question was called and the motion carried with Representative Lory voting "no". The question was called "do pass as amended" and the motion carried with Representative Kemmis not voting because he had not heard the complete testimony.

HOUSE BILL NO. 338: Representative Lory moved "do pass". Representative Daily offered a substitute motion to "pass for the day", and the motion failed with five voting "yes". There was general discussion as to whether a fiscal note was required, and the decision was it was not. The question was called and the motion carried with Representative Anderson voting

The meeting adjourned at 10:45.

There were no further questions and no further comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 311:

This is an act to eliminate the requirement providing that a justices' court wait for a defendant one hour beyond the time set for trial before the court may enter a default, etc. Representative Ramirez gave an explanation of this bill and he stated that the present system creates some problems for the justices of peace.

Jim Jensen, representing the Montana Magistrates Association, stated that they heartily endorse this bill, especially in small claims courts, and this would help a speedy remedy.

There were no further proponents and no opponents.

Senator Van Valkenburg moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 335:

This is an act to provide for a custody hearing, if requested, upon the death of a custodial parent, etc. Representative Ramirez stated that under the present law, if one parent dies, custody automatically goes to the other natural parent; and that this has created some problems. He said that in some cases, the natural father may not have seen this child for many years and a stepfather may want this child; he has raised the child; been part of the family and yet is not entitled to this child.

There were no further proponents and no opponents.

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 270:

This is an act to amend section 70-1-408 to clarify the statement of the rule against perpetuities. Representative Kemmis stated that the Montana statute does not include "if at all" and that there is interest in property that is contingent remainder. He gave an example if a person gives his interest to his wife, and then to his son, if he lives to 21 years of age, that they would want that interest to be good and to be able to vest, and the words "if at all" should be in the law to make it clear.

There were no further proponents and no opponents.

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

STANDING COMMITTEE REPORT

March 2, 19 73

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 335

Respectfully report as follows: That House Bill No. 335

BE CONCURRED IN

DO PASS

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 335

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REFERENCE BILL

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-End-